REMARKS

Applicant's remarks, below, are preceded by quotations of the related comments of the Examiner.

2. Claims 1-6, 9-19, 21-23, 25, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Steltner et al. (U.S. Patent No. 6,650,731).

A section 102 rejection for anticipation requires that every element in the claim being rejected be found in the single reference and arranged as in the claim. The absence of one element in the reference requires reversal of these section 102 rejections. *See e.g., Connell v. Sears Roebuck & Co.*, 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983).

Steltner is not an anticipating reference because Steltner does not disclose every element as arranged in the claim. Specifically Steltner does not disclose, "receiving, at a softswitch executing on a computer, a plurality of calls for switching" as required by claim 1.

The Examiner cites Fig. 19, part 1902 to support the rejection of independent claims 1, 14, and 22. Nowhere does part 1902 disclose receiving a plurality of calls for switching or a softswitch executing on a computer. Part 1902 refers to a traffic simulator. The traffic simulator of Steltner operates within the intelligence network and generates characteristics associated with multiple phone calls based on predetermined parameters for communication to a service control point ("SCP"), but the simulator does not receive calls for switching, nor does the simulator perform any switching. In the intelligent network described in Steltner, the traffic simulator determines whether the SCP level can handle providing services associated with a given call volume, i.e., "[t]he SCP level includes procedures for call evaluation and call management." Col. 9, lines 42-43. The simulator determines whether the SCP layer can handle processing a call based on SCP layer parameters at the SCP server level, rather than on the capacity of a switching element, and accordingly limits the number or volume of simulated calls that the SCP manages. *See* col. 6, lines 9-19. Furthermore, "overload protection simulator 1903 regulates the traffic volume generated or forwarded by traffic simulator 1902 on the basis of system data that enables conclusions to be drawn about the instantaneous load situation, *particularly that of the SCP simulator.*" *See* col. 25, lines 48-52 (emphasis added).

The traffic simulator does not perform any call-switching functionality or self-control, but only allows simulated calls with identifiers that the SCP layer will recognize be handled by the SCP layer. Col 14, lines 43-46. Hence, it is the SCP that controls the volume and type of calls that pass from the simulator for processing. The simulator is assigned a predetermined percentage of calls to query and

AMENDMENTS TO THE DRAWINGS

An Appendix is attached to this Response containing a replacement sheet that amends Figure 4 of Applicant's original application to conform with 37 C.F.R. § 1.84(p)(4). In accordance with 37 C.F.R. § 1.121(d), Figure 5 appears as originally filed on the same drawing sheet, but no amendments are made with respect to Figure 5. The Appendix also includes an annotated sheet.

As originally filed, Figure 4 contained two reference characters labeled "106." Amended Figure 4 conforms with 37 C.F.R. § 1.84(p)(4) and replaces one of the duplicate reference characters labeled "106" with new reference character "116." The text of the specification has been amended accordingly. Amended Figure 4 corrects a typographical error, and no new matter has been added thereby.

communicate to the SCP, that is, only subscribers that the SCP recognizes. Other calls are selectively suppressed. Col. 26, line 28. Because the intelligent network does not perform call switching, the load on the SCP is defined as "a predetermined value for the maximum number of calls sent by the traffic simulator." Col. 26, lines 53-55. The intelligent network of Steltner is directed to a configuration in which switching and control thereof occurs external to the SCP and in which the parameters associated with a load on the switch are not considered in limiting calls communicated to the SCP. Col. 9, lines 37-40.

For at least these reasons, Steltner does not anticipate claims 1, 14, and 22. Claims 2-6, 9-19, 21-23, and 26 include these above-mentioned claim limitations and are patentable for at least the same reasons as for claims 1, 14, and 22. Furthermore, Steltner does not anticipate all of the features claimed in the dependent claims. For example, the method of Steltner is directed only to a network employing signaling system 7 (SS7) components, i.e., components associated with traditional telephones. *See* col. 9, lines 46-48. The traffic simulator of Steltner does not receive actual call signals from a plurality of signaling subsystems including public branch exchange or session initiation protocol networks. The method of Steltner fails to disclose, teach or suggest appropriate methods associated with digital or packetized network telephony. As such, Steltner does not teach or suggest methods for routing telephone calls that originate or terminate in a non-SS7 network.

Accordingly, withdrawal of the rejection of claims 1-6, 9-19, 21-23, 25 and 26 as anticipated by the Steltner reference is respectfully requested. If this ground of rejection is repeated, the Examiner is respectfully requested to quote verbatim the language in the reference regarded as anticipating each and every element of these claims.

5. Claims 7, 8, 20, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steltner et al. (U.S. Patent No. 6,650,731).

In Ex parte Williams, slip op. p. 3 (BPA&I, Appeal No. 88-3388, April 17, 1990), the Board said, "It appears to us the Examiner has picked and chosen various features from the applied prior art using the claim as a guide."

In re Wright, 6 U.S.P.Q. 2d 1959 (Fed. Cir. 1988), the court said: "We repeat the mandate of 35 U.S.C. 103: it is the invention as a whole that must be considered in obviousness determinations. The invention as a whole embraces the structure, its properties, and the problem it solves."

In Ex parte Clapp, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985), the Board provided that

> To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

The ground of rejection relied on by the Examiner is respectfully traversed as applied to the rejected claims. Steltner would not have made the rejected claims obvious because the Applicant's claimed invention would not result. More specifically, Steltner does not teach or suggest receiving, at a softswitch executing on a computer a plurality of calls as required in claims 7, 8, 20, and 24. Because Steltner does not teach or suggest at least one claim limitation, namely a softswitch executing on a computer, as discussed above, Applicant's invention is patentable over Steltner for at least these reasons.

Further, the claim as a whole must be obvious. Steltner expressly limits its SCP processor capacity to about 80% and does not contemplate buffer capacity. *See* col. 27, lines 32-35. In contrast, Applicant's method and system achieve *softswitch* processor capacity of 90-95% and buffer capacity of about 50% based on actual calls received from a signaling subsystem. The Examiner relies on catchall language of Steltner regarding achieving the highest possible intelligent network efficiency given basic conditions as teaching specific softswitch component capacities claimed by Applicant's call processing method and system. The Examiner, however, offers no evidence of how achieving intelligent network efficiency and 80% capacity for a SCP processor suggest the claimed values as related to a softswitch. A mere invitation to explore or to try does not render an invention obvious. (*see e.g.*, Ex parte Obukowicz, 27 USPQ2d 1063 (B.P.A.I. 1992)) If the Examiner is relying on personal knowledge, the Applicant respectfully requests an affidavit as to the knowledge used to render the claimed invention obvious. If the Examiner is relying on the presumed knowledge of a person having ordinary skill in the art, the Examiner is respectfully requested to produce an affidavit or other evidence as to the level of skill in the art to support the rejection of the claims as obvious.

For at least these reasons, Steltner would not have anticipated or made obvious claims 7, 8, 20, and 24. Accordingly, withdrawal of the rejection of claims 7, 8, 20, and 24 as unpatentable over the Steltner reference is respectfully requested. If this ground of rejection is repeated, the Examiner is respectfully requested to associate each element in these claims with corresponding elements in the reference and quote verbatim the language in the reference regarded as suggesting Applicant's claim language.

Applicant's discussion of particular positions of the Examiner does not constitute a concession with respect to any positions that are not expressly contested by the Applicant. Applicant's emphasis of

particular reasons why the claims are patentable does not imply that there are not other sufficient reasons why the claims are patentable. Applicant's amendment of the claims does not constitute a concession that the claims are not allowable in their unamended form.

In view of the foregoing remarks and the inability of the prior art, alone or in combination, to anticipate, suggest or make obvious the subject matter as a whole of the invention disclosed and claimed in this application, all the claims are submitted to be in a condition for allowance, and notice thereof is respectfully requested. An appropriate fee to cover the one-month extension of time is enclosed herewith. Please apply any other charges or credits to deposit account 50-3081.

Respectfully submitted,

Date: 3/14/05

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ANNOTATED SHEET
Title: METHOD AND SYSTEM FOR INHIBITING SOFTSWITCH OVERLOAD
Applicant: Lu
Serial No.: 09/821,509
David G. Miranda
1 of 1
Docket No.: SNS-010
Filed: March 29, 2001
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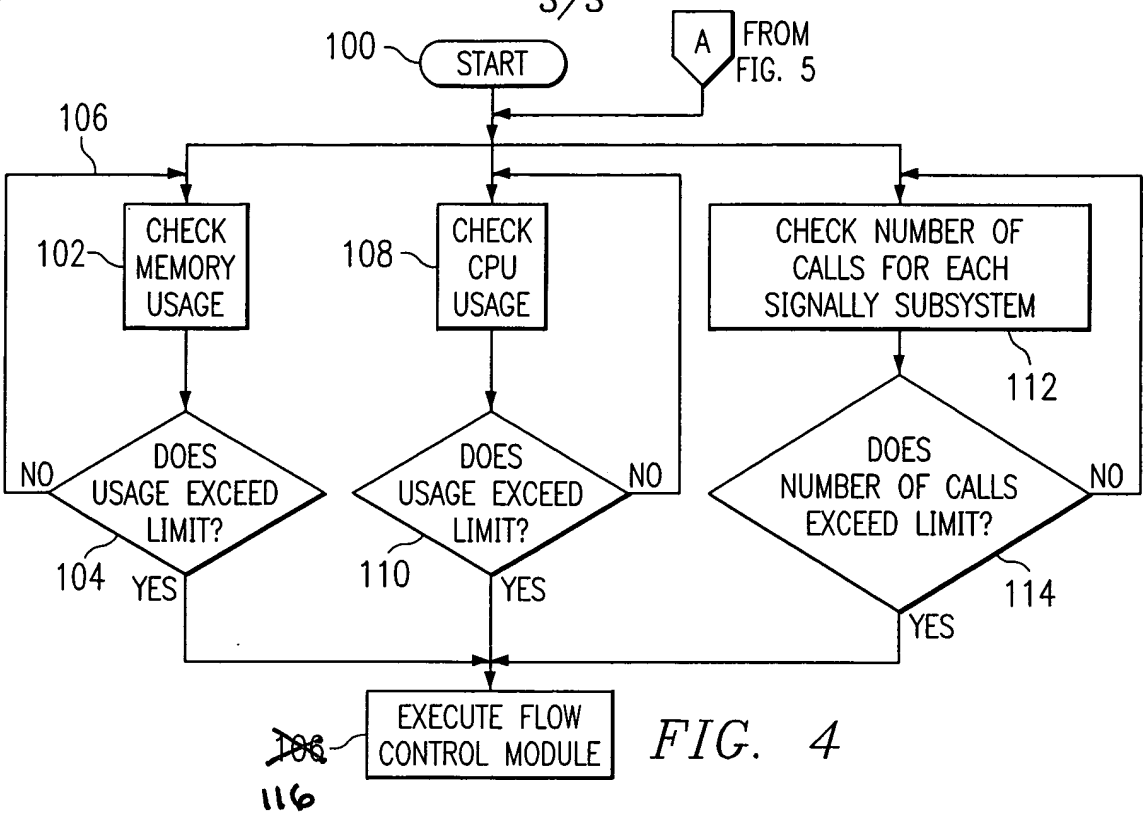

FIG. 4

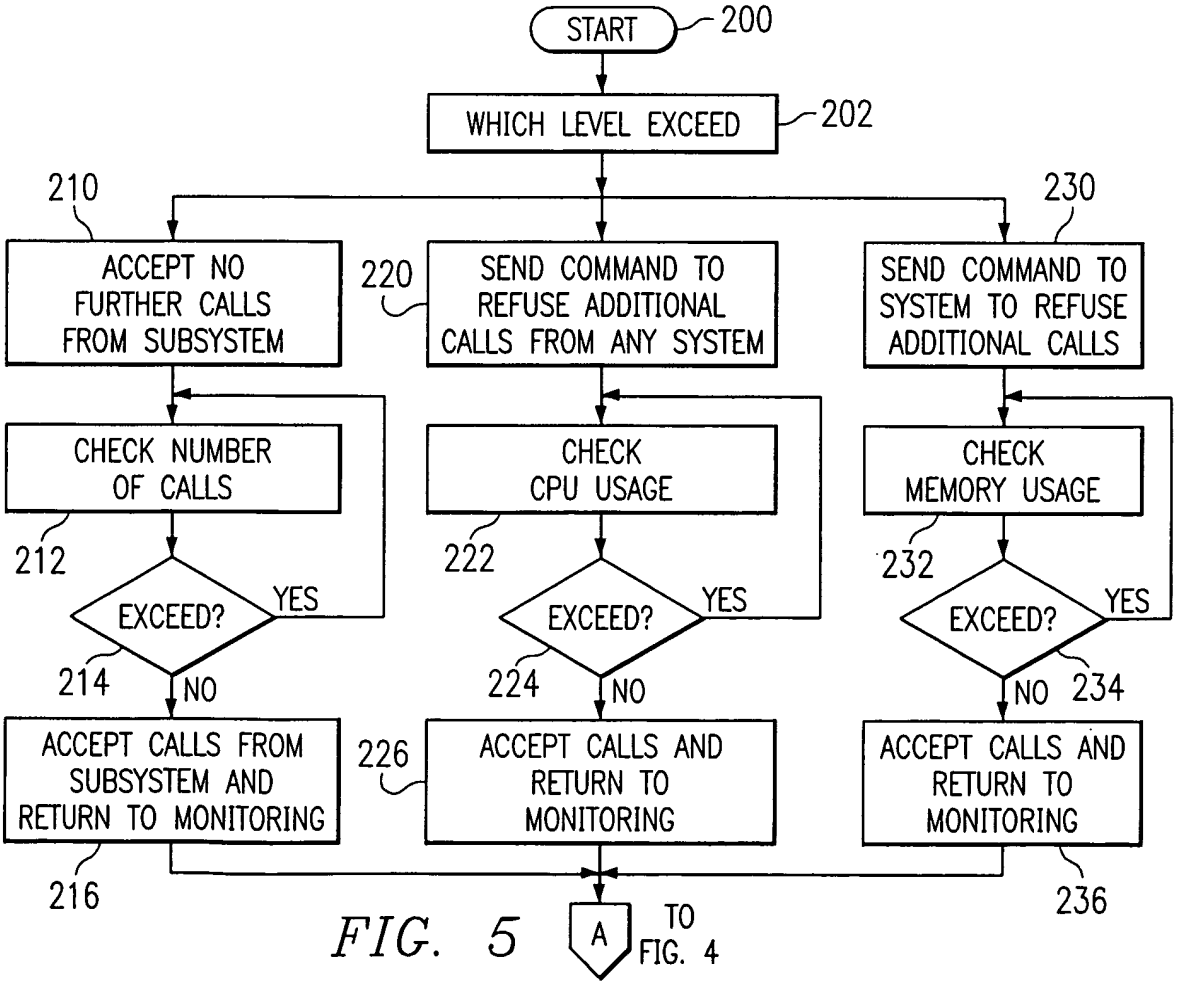

FIG. 5